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Attorneys for Defendant
WILLIAMS LEA INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/ OAKLAND DIVISION

JUDE DELGADO, an Individual

Plaintiff,

vs.

WILLIAMS LEA, INC., a Corporation;
Charlotte Dolly, an individual; and DOES 1
through 100, inclusive,

Defendants.

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NOTICE OF REMOVAL OF CIVIL
ACTION

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS ATTORNEYS
OF RECORD:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. section 1441(a), defendant
Williams Lea Inc. hereby removes to this Court the action described herein and respectfully
submits the following statement of grounds for removal:

THE SUPERIOR COURT ACTION

1. On May 20, 2007, an action was commenced in the Superior Court of the State of
California for the County of San Francisco, entitled "*Jude Delgado v. Williams Lea, Inc, a*

1 *Corporation; Charlotte Dolly, an individual; and does 1 through 100, inclusive,”* Case No. CGC
2 07-4637695 (the “Superior Court Action”).

3 2. In the Superior Court Action, plaintiff Jude Delgado seeks damages for alleged
4 disability discrimination. Specifically, plaintiff alleges that he and a coworker (Sandra Chew)
5 arrived late to work on March 27, 2007. (Complaint (“Compl.”), ¶ 7.) Although they were
6 scheduled to begin work at 6:00 a.m., they did not arrive until 6:18 a.m. and did not begin work
7 until 6:22 a.m. (*Id.*) Later that day, Ms. Chew made entries on Williams Lea’s time records
8 reflecting (falsely) that she and plaintiff had started work at 6:00 a.m. (*Id.* at ¶ 10.)

9 3. The Complaint alleges that Williams Lea terminated plaintiff’s employment for
10 “Time Card Falsification.” (Compl., ¶ 14.) The Complaint further alleges that Williams Lea’s
11 stated reason for termination was false and pretextual and that it actually terminated plaintiff’s
12 employment because he had suffered a workplace injury on September 1, 2005 and took an
13 unscheduled absence on March 20, 2007. (*Id.* ¶¶ 15, 16, 24.)

14 4. Plaintiff also alleges that his manager, Charlotte Dolly, “expressly” and
15 “impliedly” accused plaintiff of “falsifying time cards,” “violat[ing] company policies,”
16 “deserv[ing] written warnings and disciplinary actions,” being “a troublemaker,” making “false
17 complaints,” and being “dishonest, lazy, incompetent, and a poor performer.” (Compl., ¶ 44.)

18 5. On the basis of these allegations, plaintiff sues Williams Lea for violation of the
19 California Family Rights Act, disability discrimination, failure to accommodate, libel, and
20 failure to compensate for hours worked under California Industrial Welfare Commission Orders
21 and California Labor Code section 1182.11. Plaintiff seeks general, special and punitive
22 damages, as well as attorneys fees. (Compl., at Prayer.)

23 SERVICE

24 6. Williams Lea is informed and believes that the Summons and Complaint in the
25 Superior Court Action were served on Williams Lea on or about June 8, 2007. Williams Lea is
26 informed and believes that Charlotte Dolly has not been properly served. Attached hereto as
27 Exhibit A are true and correct copies of the Complaint, the Answer and all other pleadings
28 which Williams Lea believes are on file in the Superior Court Action.

JURISDICTION

7. Williams Lea is informed and believes that plaintiff was, at the time of filing of the Superior Court Action, now is, and at all relevant times has been, a citizen and resident of the State of California. Williams Lea was, at the time of filing of the Superior Court Action, now is, and at all relevant times has been, a corporation formed under the laws of the State of Delaware, with its principal place of business in Illinois.

8. Plaintiff and Williams Lea, accordingly, are citizens and residents of different states.

THE FRAUDULENT JOINDER OF A CALIFORNIA RESIDENT

9. In addition to asserting causes of action against Williams Lea, plaintiff purports to assert a claim for relief against an individual defendant, Charlotte Dolly, who is a Williams Lea employee. As set forth below, plaintiff's joinder of Ms. Dolly is fraudulent and designed to attempt to prevent the removal of the Superior Court Action to this Court, where it properly belongs, by the assertion of a sham claim against a resident defendant. In such a circumstance, a federal court will disregard the sham joinder of such an individual for purposes of determining whether diversity jurisdiction exists.

10. In particular, plaintiffs' Complaint contains a single claim for slander against Ms. Dolly, the putative resident defendant. Plaintiff premises that claim on allegations that Ms. Dolly "expressly" and "impliedly" accused plaintiff of "falsifying time cards," "violat[ing] company policies," "deserv[ing] written warnings and disciplinary actions," being "a troublemaker," making "false complaints" and being "dishonest, lazy, incompetent, and a poor performer." (Compl., ¶ 44.) Plaintiff cannot recover on this claim, for several reasons.

11. First, any statements made by Ms. Dolly about plaintiff were made in the personnel management context without malice and for the purpose of making informed personnel decisions. As a result, Ms. Dolly's alleged statements were privileged and cannot support slander liability as a matter of law. *See* Cal. Civil Code § 47(c); *Kelly v. General Telephone Co.*, 136 Cal. App. 3d 278, 285 (1982) (statements made in personnel context are privileged under section 47).

12. In addition, plaintiff has failed to adequately allege a claim for slander. *See Okun v. Superior Court*, 29 Cal. 3d 442 (1981). In particular, plaintiff has failed to allege specific facts demonstrating that Ms. Dolly acted with malice. *See Martin v. Kearney*, 51 Cal. App. 3d 309 (1975).

13. Further, any statements made by Ms. Dolly about plaintiff were matters of opinion, which cannot support slander liability as a matter of law. *See Conkle*, 73 F.3d at 917 (statements that plaintiff was “difficult as an employee” and “more trouble than she [was] worth” were nonactionable statements of opinion); *Jensen v. Hewlett-Packard, Inc.*, 14 Cal. App. 4th 958, 965 (1993) (an “employer’s perceptions about an employee’s efforts, attitude, performance, potential or worth to enterprise” cannot support slander liability even if they are “objectively wrong and cannot be supported by reference to concrete, provable facts”).

14. Finally, plaintiff admits he was late for work and that his co-worker falsified his time card. (Compl., ¶¶ 7, 10.) Williams Lea contends Ms. Chew did so on behalf of Mr. Delgado. To the extent the statements attributed to Ms. Dolly were true, they cannot support slander liability as a matter of law. *See Conkle v. Jeong*, 73 F.3d 909, 917 (9th Cir. 1995) (“Truth is a complete defense to slander, regardless of the bad faith or malicious purpose of the publisher of the material.”) (citation and quotation marks omitted).

15. Plaintiff’s claim against Ms. Dolly, therefore, is meritless. Accordingly, Ms. Dolly was “fraudulently joined for diversity and removal purposes,” and her presence is disregarded in determining jurisdiction. *See Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318-1320 (9th Cir. 1998). Therefore, this matter involves parties of diverse citizenship and residency.

AMOUNT IN CONTROVERSY

16. On its face, the Complaint seeks in excess of \$150,000 in compensatory damages. (Compl., ¶ 25.) Plaintiff also seeks attorneys fees and punitive damages, which are included in determining the amount in controversy. *Bell v. Preferred Life Society*, 320 U.S. 238, 239 (1943), *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998). Accordingly, Williams Lea is informed and believes that plaintiff seeks to recover damages in excess of seventy-five thousand dollars (\$75,000).

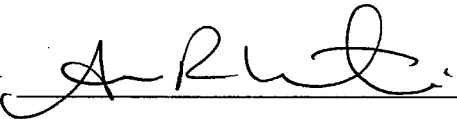
1 17. The Superior Court Action is a civil action of which this Court has original
2 jurisdiction under 28 U.S.C. section 1332, in that plaintiff and Williams Lea are citizens of
3 different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4 18. The case is therefore one which Williams Lea may remove to this Court pursuant to
5 28 U.S.C. sections 1441 and 1446. The removal is effected within thirty days of service, in
6 accordance with 28 U.S.C. section 1446(b).

7 WHEREFORE, Williams Lea hereby gives notice that this action has been removed, in
8 its entirety, from the Superior Court of the State of California for the County of San Francisco to
9 the United States District Court for the Northern District of California, for further proceedings as
10 though it originally had been instituted herein.

11 Dated: July 6, 2007

SONNENSCHN NATH & ROSENTHAL LLP

12
13
14 By 

15 SONIA MARTIN

16 Attorneys for Defendant WILLIAMS LEA INC.
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EXHIBIT A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

WILLIAMS LEA INC., a Corporation; Charlotte Dolly, an individual;
and, DOES 1 through 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
JUDE DELGADO, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelpspanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelpspanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT-SF
400 MCCALLISTER AV.
SF CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

LAW OFFICES OF MICHAEL HOFFMAN

MICHAEL HOFFMAN 154481 22 Battery Street Ste. 1000 San Francisco CA 94111 415 362-1111

DATE: MAY 29 2007
(Fecha):

Clerk by: CHRISTINA E. DIAZ-ROSA Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): WILLIAMS LEA INC a Corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

(SEAL)

LAW OFFICES OF MICHAEL HOFFMAN
MICHAEL HOFFMAN 154481
22 Battery Street Ste. 1000
San Francisco CA 94111
Tel (415) 362-1111
Fax (415) 362-1112
e-mail: mhoffman@employment-lawyers.com

Attorney for Plaintiff,
JUDE DELGADO

ENDORSED
FILED
San Francisco County Superior Court
MAY 29 2007

GORDON PARKER, Clerk
County Clerk

OCT 26 2007 - 9:00 AM

DEPARTMENT 212
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED

CASE NO. 07-2453766

JUDE DELGADO, an individual

COMPLAINT FOR DAMAGES

Plaintiff,

vs.

WILLIAMS LEA INC, a Corporation;
Charlotte Dolly, an individual; and, DOES 1
through 100, inclusive,

Defendant

1. CALIFORNIA FAMILY RIGHTS ACT
FAILURE TO GUARANTEE
EMPLOYMENT
2. DISABILITY DISCRIMINATION
FAILURE TO ENGAGE
3. LIBEL (CC 46 (3))
4. FAILURE TO COMPENSATE FOR
HOURS WORKED UNDER
CALIFORNIA LABOR CODE

JURY TRIAL DEMANDED

Comes now Plaintiff JUDE DELGADO who demands a jury trial and alleges as follows:

1. At all times material herein, Plaintiff, JUDE DELGADO (hereinafter referred to as "Plaintiff") was and is a resident of the State of California, County of San Francisco. At all times material herein, Defendant WILLIAMS LEA INC (hereinafter referred to as "Williams") was and is a foreign corporation registered to do business in the state of California. all times material herein, Defendant CHARLOTTE DOLLY (hereinafter referred to as "Dolly") was and is a resident of the State of California.
2. The true names and capacities of the Defendants named herein as Does 1 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such Defendants by fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that Doe Defendants are California residents. Plaintiff will amend this complaint to show such Defendants true names and capacities when they have been determined.
3. Plaintiff is informed and believes, and, on the basis of that belief, thereby alleges, that each of the Defendants herein was at all times relevant hereto the agent, employee or representative of the remaining Defendants and was acting at least in part within the course and scope of such relationship.
4. Plaintiff is informed and believes and thereon allege that unless otherwise indicated, each defendant was the agent and/or employee of every other defendant acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-defendants.
5. Heller Ehrman LLP ("Heller") outsourced their San Francisco Document Production Department ("DOCS Center") to Williams' to manage the DOCS Center for Heller on January 23, 2006. He was a former Heller employee, having worked for the firm for 16 years. Plaintiff's job Title with Defendant

1 was Document Specialist. His Manager for the DOCS Center department was
2 defendant Charlotte Dolly.

- 3 6. At approximately 5:40 a.m or 5:45 a.m., on the morning of Tuesday, March
4 27, 2007, Jude Delgado contacted the Williams Lea DOCS Center and spoke
5 with Shonda Furr, Graveyard Workflow Coordinator, to inform her, the
6 Graveyard shift, and the DOCS Center staff that he and Sandra Chew were
7 running late as a result of heavy traffic. Shonda Furr acknowledged his call
8 and informed him that she would be conveying the information regarding
9 their late arrival to the DOCS Center staff, which includes the DOCS Center
10 Manager and DOCS Center Supervisor, per Williams Lea rules regarding
11 absences and late arrivals.
- 12 7. On Tuesday, March 27, 2007, Sandra Chew and Jude Delgado arrived at the
13 DOCS Center approximately 19 minutes late, arriving at 6:19 a.m. This was
14 the first time they had ever arrived late for work. Sandra Chew and Jude
15 Delgado informed the Graveyard crew that they had arrived, and both
16 immediately began to commence work on projects at 6:22 a.m.
- 17 8. Williams Lea utilizes a computerized time clock system, ("Kronos") where
18 the employee enters their user name and password to gain access to the
19 program and then "punches"; i.e., records their arrival time by clicking on a
20 time button. After recording their time the, employee logs out of Kronos.
- 21 9. Sandra Chew realized that in her haste to commence work on projects, she
22 forgot to "punch"; i.e., record her and Jude Delgado's time in the Kronos
23 Problem Log, ("problem log"), as they were rushing through the door,
24 bypassing the problem log on their way in. The problem log is used by
25 everyone in the DOCS Center and is used when Kronos is down; i.e., not
26 working as a result of technical problems, or when employees arrive early or
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1 late for work and forget to "punch", or when employees forget to "punch" out
2 or in from their lunch break.

3 10. At approximately 8:00 a.m. on the same day, Sandra Chew began to record
4 her and Jude Delgado's time in the problem log, because she was concerned
5 that the DOCS Center Manager and/or Supervisor would be arriving soon
6 and would notice that no entry was made in the problem log regarding their
7 late arrival.

8 11. Because Sandra Chew and Jude Delgado have identical work schedules,
9 Sandra Chew started, but did not complete, the entry in the problem log for
10 both of them, as she had done in the past. Plaintiff used the term "punch"
11 because it was the terminology; i.e., the common term used when referring to
12 the recordation of time for payroll purposes. She indicated a time-in of 6 AM
13 because this was their scheduled time in.

14 12. There was no intent or effort made by them to conceal the fact that they were
15 late-they had already phoned in in advance, per Williams Lea rules, prior to
16 their 6:00 a.m. official start time, and the DOCS Center staff, which included
17 the DOCS Center Manager and the DOCS Center Supervisor, were all
18 already informed that they were running late.

19 13. When a question arose regarding an entry made in the problem log, it was
20 incumbent upon the DOCS Center Manager and/or the DOCS Center
21 Supervisor to contact the employee who made the entry to obtain
22 clarification on the ambiguity of what was written in the problem log, prior
23 to making any corrections in Kronos. Upon receiving the clarification, the
24 DOCS Center Manager or DOCS Center Supervisor processes the
25 corrections in Kronos. Neither the DOCS Center Manager nor the DOCS
26 Center Supervisor contacted Sandra Chew or Jude Delgado to clarify or
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1 explain the entry made in the problem log.

2 14. From Wednesday, March 28 to Wednesday, April 4, their termination date
3 for "Time Card Falsification", the DOCS Center Manager nor the DOCS
4 Center Supervisor had not contacted Sandra Chew or Jude Delgado to clarify
5 the entry made in the problem log. Both Sandra Chew and Jude Delgado
6 were available to provide any clarification or answer any questions the
7 DOCS Center Manager and/or the DOCS Center Supervisor may have had
8 regarding the problem log entry, as was done in the past for everyone.

9 15. Plaintiff was injured at work on September 1, 2005. He filed a Workers
10 Compensation claim. Radiographic diagnosis showed disc desiccation with
11 protrusions to his neck and shoulder area. Plaintiff's supervisors were well
12 aware of his disabilities and on notice that he suffered from a serious health
13 condition under the California Family Rights Act, California Government
14 Code § 12945, et seq.

15 16. On March 20, 2007, Plaintiff was given a PIP for 'unscheduled PTO-Illness'.
16 The PIP listed specific sick occurrences which were the subject of the
17 discipline. The PIP also stated that Plaintiff had been disciplined on
18 September 11, 2006 for previous sick occurrences. All sick occurrences were
19 protected under the California Family Rights Act, California Government
20 Code § 12945, et seq.

21 17. Plaintiff is informed and believes, and on that basis alleges, that at all times
22 material herein Defendant was and continues to be a company that employs
23 more than fifty (50) employees at Plaintiff's place of employment.

24 18. At all times material hereto, Plaintiff was an employee covered by the
25 California Family Rights Act, California Government Code § 12945.2(a).

26 19. At all times material hereto, Defendant Williams was an employer covered
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by the California Family Rights Act, California Government Code §12945.2(b).

20. Plaintiff has filed a charge with the State of California, Department of Fair Employment and Housing.

21. The Department of Fair Employment and Housing will close Plaintiff's case in order to allow Plaintiff to pursue civil remedies and issued Plaintiff a right to sue letter.

FIRST CAUSE OF ACTION
(VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT
INTERFERENCE WITH CFRA EXERCISE, FAILURE TO GUARANTEE
EMPLOYMENT)

(Against Defendant Williams).
 (Under California Government Code § 12945.2)

22. Plaintiff hereby incorporates paragraphs 1 through 24, inclusive, as though said paragraphs are fully set forth herein.

23. At all times herein mentioned, Government Code Section 12945.2 was in full force and effect, and was binding upon Defendant Williams. Said section required Defendant Williams, its employees and agents, to not discriminate against or discharge Plaintiff because he had triggered rights protected by the CFRA.

24. Plaintiff is informed and believes and thereon alleges that the acts of Defendant Williams in criticizing his performance because of medical leave issues and in terminating him from his employment for false and pretextual reasons is an unlawful employment practice in violation of the California Family Rights Act (hereinafter "CFRA"), Government Code Section 12945.2. The CFRA also provided job protection as Defendant knew plaintiff had a serious health condition.

1 25. As a proximate result of Defendant Williams's wrongful conduct as alleged
2 herein, Plaintiff sustained damages from the loss of his employment; from
3 loss of past and future earnings and other employment benefits; from loss of
4 all other rights and benefits which naturally exist with fair employment, but
5 which were denied him by Defendant Williams; all in an amount to be
6 proven at the time of trial in excess of \$150,000.

7 26. As a further proximate result of the wrongful conduct by Defendant Williams
8 and the resulting damages to Plaintiff, Plaintiff sustained emotional distress,
9 all to his damage in an amount to be proven at the time of trial.

10 27. In doing the acts herein alleged, Defendant Williams acted intentionally,
11 oppressively, and maliciously toward Plaintiff with advance knowledge and
12 conscious disregard of Plaintiff's rights, or the consequences to Plaintiff, or
13 did authorize or ratify such intentional, oppressive and malicious acts, with
14 the intent of depriving Plaintiff of property and legal rights and otherwise
15 causing Plaintiff injury. Because the acts taken toward Plaintiff were carried
16 out by managerial employees acting in a deliberate, cold, callous, and
17 intentional manner in order to injure and damage Plaintiff, Plaintiff therefore
18 requests the assessment of punitive damages.

19 28. Plaintiff claims prejudgment interest on all said amounts, at the rate set by
20 law, in an amount to be proven at the time of trial.

21 29. Plaintiff also claims attorneys fees and costs incurred herein (Gov't. Code
22 §12965).

23 **SECOND CAUSE OF ACTION**
24 **(DISABILITY DISCRIMINATION**
25 **FAILURE TO ACCOMMODATE)**
26 **(Against Defendant Williams)**
27 **(Government Code Section 12940)**
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1 30. Plaintiff hereby incorporates paragraphs 13 through 32, inclusive, as though
2 said paragraphs are fully set forth herein. Plaintiff's disability limited a major
3 life activity within the meaning of Government Code Section 12926.1. At all
4 times herein mentioned, Government Code Section 12940 was in full force
5 and effect, and was binding upon Defendant Williams. Said section
6 required Defendant Williams, its employees and agents, to reasonably
7 accommodate Plaintiff's disability and to engage in a timely, good faith and
8 interactive process with Plaintiff to determine reasonable accommodations
9 for his disability other than to discipline him for protected sick occurrences.

10 31. Plaintiff is informed and believes and thereon alleges that the acts of
11 Defendant Williams in failing to accommodate his absences from work due
12 to his disability and in failing to seek reasonable accommodation for his
13 disability other than termination from his employment is an unlawful
14 employment practice in violation of Government Code Section 12940.

15 As a proximate result of Defendant Williams's wrongful conduct as alleged
16 herein, Plaintiff sustained damages from the loss of his employment; from
17 loss of past and future earnings and other employment benefits; from loss of
18 all other rights and benefits which naturally exist with fair employment, but
19 which were denied him by Defendant Williams; all in an amount to be
20 proven at the time of trial in excess of \$150,000.

21 32. As a further proximate result of the wrongful conduct by Defendant Williams
22 and the resulting damages to Plaintiff, Plaintiff sustained emotional distress,
23 all to his damage in an amount to be proven at the time of trial.

24 33. In doing the acts herein alleged, Defendant Williams acted intentionally,
25 oppressively, and maliciously toward Plaintiff with advance knowledge and
26 conscious disregard of Plaintiff's rights, or the consequences to Plaintiff, or
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1 did authorize or ratify such intentional, oppressive and malicious acts, with
2 the intent of depriving Plaintiff of property and legal rights and otherwise
3 causing Plaintiff injury. Because the acts taken toward Plaintiff were carried
4 out by managerial employees acting in a deliberate, cold, callous, and
5 intentional manner in order to injure and damage Plaintiff, Plaintiff therefore
6 requests the assessment of punitive damages.

7 34. Plaintiff claims prejudgment interest on all said amounts, at the rate set by
8 law, in an amount to be proven at the time of trial.

9 35. Plaintiff also claims attorneys fees and costs incurred herein (Gov't. Code
10 §12965).

11 **THIRD CAUSE OF ACTION**
12 **(DISABILITY/PERCEIVED/ DISCRIMINATION)**
13 **(Against Defendant Williams)**
14 **(Government Code Section 12940)**

15 36. Plaintiff hereby incorporates paragraphs 13 through 52, inclusive, as though
16 said paragraphs are fully set forth herein.

17 37. At all times herein mentioned, Government Code Section 12940 was in full
18 force and effect, and was binding upon Defendant Williams. Said section
19 required Defendant Williams, its employees and agents, to refrain from
20 discriminating against any employee because an employee had a disability
21 within the meaning of Government Code Section 12926.1.

22 38. Plaintiff is informed and believes and thereon alleges that the acts of
23 Defendant Williams in terminating him from his employment are an
24 unlawful employment practice in violation of Government Code Section
25 12940.

26 39. As a proximate result of Defendant Williams's wrongful conduct as alleged
27 herein, Plaintiff sustained damages from the loss of his employment; from
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1 loss of past and future earnings and other employment benefits; from loss of
 2 all other rights and benefits which naturally exist with fair employment, but
 3 which were denied him by Defendant Williams; all in an amount to be
 4 proven at the time of trial in excess of \$150,000.

5 40. As a further proximate result of the wrongful conduct by Defendant Williams
 6 and the resulting damages to Plaintiff, Plaintiff sustained emotional distress,
 7 all to his damage in an amount to be proven at the time of trial.

8 41. In doing the acts herein alleged, Defendant Williams acted intentionally,
 9 oppressively, and maliciously toward Plaintiff with advance knowledge and
 10 conscious disregard of Plaintiff's rights, or the consequences to Plaintiff, or
 11 did authorize or ratify such intentional, oppressive and malicious acts, with
 12 the intent of depriving Plaintiff of property and legal rights and otherwise
 13 causing Plaintiff injury. Because the acts taken toward Plaintiff were carried
 14 out by managerial employees acting in a deliberate, cold, callous, and
 15 intentional manner in order to injure and damage Plaintiff, Plaintiff therefore
 16 requests the assessment of punitive damages.

17 42. Plaintiff claims prejudgment interest on all said amounts, at the rate set by
 18 law, in an amount to be proven at the time of trial.

19 43. Plaintiff also claims attorneys fees and costs incurred herein (Gov't. Code
 20 §12965).

21 **FOURTH CAUSE OF ACTION**
 22 **LIBEL**
 23 **(Against Dolly ONLY)**
 24 **(Government Code Section 12940)**

25 44. Dolly spoke and wrote negatively about Plaintiff honesty. Specifically,
 26 Defendant Dolly in writing stated that Plaintiff was 'falsifying time
 27 cards'. He is informed and believes Defendants, and each of them, by the
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1 herein-described acts, conspired to, and in fact, did negligently, recklessly,
2 and intentionally caused excessive and unsolicited internal and external
3 publications of defamation, of and concerning Plaintiff, to third persons
4 and to the community. These false and defamatory statements included
5 express and implied: accusations that Plaintiff violated company policies;
6 that he was such a poor performer; that he deserved written warnings and
7 disciplinary actions against him; that he was incompetent; a troublemaker;
8 made false complaints; and was dishonest. These and other similar false
9 statements expressly and impliedly stated that Plaintiff was dishonest, lazy,
10 incompetent, and a poor performer.

11 45. While the precise dates of these publications are not known to Plaintiff, he
12 is informed and believes the publications may have started in April 2007,
13 for the improper purpose of retaliating against him, and were later
14 published and foreseeably republished to first cause, and then justify,
15 Plaintiff's wrongful and illegal termination. These publications were
16 outrageous, negligent, reckless, intentional, and maliciously published and
17 republished by Defendants, and each of them. Plaintiff is informed and
18 believes that the negligent, reckless, and intentional publications by
19 Defendants, and each of them, were and continue to be, foreseeably
20 published and republished by Defendants, their agents and employees,
21 recipients, in the community. Plaintiff hereby seeks damages for these
22 publications and all foreseeable republications discovered up to the time of
23 trial.

24 46. During the above-described time-frame, Defendants, and each of them,
25 conspired to, and in fact, did negligently, recklessly, and intentionally
26 cause excessive and unsolicited publication of defamation, of and
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1 concerning Plaintiff, to third persons, who had no need or desire to know.
2 Those third person(s) to whom these Defendants published this defamation
3 are believed to include, but are not limited to, other agents and employees
4 of Defendants, and each of them, and the community, all of whom are
5 known to Defendants.

6 47. The defamatory publications consisted of oral and written, knowingly false
7 and unprivileged communications, tending directly to injure Plaintiff and
8 Plaintiff's personal, business, and professional reputation. These
9 publications included the following false and defamatory statements (in
10 violation of Civil Code §§ 45 and 46(3)(5)) with the meaning and/or
11 substance that Plaintiff: violated company policies; thathe was such a poor
12 performer thathe deserved written warnings and disciplinary actions
13 against him; thathe was incompetent; dishonest; untrustworthy; a
14 troublemaker; and made false complaints. These and similar statements
15 published by Defendants, and each of them, expressly and impliedly
16 asserted that Plaintiff was incompetent, dishonest, and a poor employee.

17 48. Plaintiff is informed, believes and fears that these false and defamatory per
18 se statements will continue to be published by Defendants, and each of
19 them, and will be foreseeably republished by their recipients, all to the
20 ongoing harm and injury to Plaintiff's business, professional, and personal
21 reputations. Plaintiff also seeks redress in this action for all foreseeable
22 republications, including him own compelled self-publication of these
23 defamatory statements.

24 49. The defamatory meaning of all of the above-described false and
25 defamatory statements and their reference to Plaintiff, were understood by
26 these above-referenced third person recipients and other members of the
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1 community who are known to Defendants, and each of them, but unknown
2 to Plaintiff at this time.

3 50. None of Defendants' defamatory publications against Plaintiff referenced
4 above are true. The above defamatory statements were understood as
5 assertions of fact, and not as opinion. Plaintiff is informed and believes
6 this defamation will continue to be negligently, recklessly, and
7 intentionally published and foreseeably republished by Defendants, and
8 each of them, and foreseeably republished by recipients of Defendants'
9 publications, thereby causing additional injury and damages for which
10 Plaintiff seeks redress by this action.

11 51. Each of these false defamatory per se publications (as set forth above)
12 were negligently, recklessly, and intentionally published in a manner
13 equaling malice and abuse of any alleged conditional privilege (which
14 Plaintiff denies existed), since the publications, and each of them, were
15 made with hatred, ill will, and an intent to vex, harass, annoy, and injure
16 Plaintiff in order to justify the illegal and cruel actions of Defendants, and
17 each of them, to cause further damage to Plaintiff's professional and
18 personal reputation, to cause him to be fired, to justify him firing, and to
19 retaliate against Plaintiff for prior ill will, rivalry, and disputes in
20 retaliation.

21 52. Each of these publications by Defendants, and each of them, were made
22 with knowledge that no investigation supported the unsubstantiated and
23 obviously false statements. The Defendants, published these statements
24 knowing them to be false, unsubstantiated by any reasonable investigation
25 and the product of hostile witnesses. These acts of publication were known
26 by Defendants, and each of them, to be negligent to such a degree as to be
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1 reckless. In fact, not only did Defendants, and each of them, have no
2 reasonable basis to believe these statements, but they also had no belief in
3 the truth of these statements, and in fact knew the statements to be false.
4 Defendants, and each of them, excessively, negligently, and recklessly
5 published these statements to individuals with no need to know, and who
6 made no inquiry, and who had a mere general or idle curiosity of this
7 information.

8 53. The above complained-of publications by Defendants, and each of them,
9 were made with hatred and ill will towards Plaintiff and the design and
10 intent to injure Plaintiff, Plaintiff's good name, his reputation, employment
11 and employability. Defendants, and each of them, published these
12 statements, not with an intent to protect any interest intended to be
13 protected by any privilege, but with negligence, recklessness and/or an
14 intent to injure Plaintiff and destroy his reputation. Therefore, no privilege
15 existed to protect any of the Defendants from liability for any of these
16 aforementioned publications or republications.

17 54. As a proximate result of the publication and republication of these
18 defamatory statements by Defendants, and each of them, Plaintiff has
19 suffered injury to his personal, business and professional reputation
20 including suffering embarrassment, humiliation, severe emotional distress,
21 shunning, anguish, fear, loss of employment, and employability, and
22 significant economic loss in the form of lost wages and future earnings, all
23 to Plaintiff's economic, emotional, and general damage in an amount
24 according to proof.

25 55. Defendants, and each of them, committed the acts alleged herein
26 recklessly, maliciously, fraudulently, and oppressively, with the wrongful
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1 intention of injuring Plaintiff, for an improper and evil motive amounting
 2 to malice (as described above), and which abused and/or prevented the
 3 existence of any conditional privilege, which in fact did not exist, and with
 4 a reckless and conscious disregard of Plaintiff's rights. All actions of
 5 Defendants, and each of them, their agents and employees, herein alleged
 6 were known, ratified and approved by the Defendants, and each of them.
 7 Plaintiff thus is entitled to recover punitive and exemplary damages from
 8 Defendants, and each of them, for these wanton, obnoxious, and despicable
 9 acts in an amount based on the wealth and ability to pay according to proof
 10 at time of trial.

11 **FIFTH CAUSE OF ACTION**
 12 (Failure to Compensate for Hours Worked
 13 Under California Industrial Welfare Commission Orders
 14 and California Labor Code §§1182.11)

15 56. Plaintiff realleges and incorporates by this reference all the allegations set
 16 forth in the preceding paragraphs.

17 57. At all times relevant herein, Defendant Williams was required to
 18 compensate its hourly employees for any hours worked upon reporting for
 19 work at the appointed time stated by Defendant pursuant to California
 20 Labor Code §§1182.11, which states: "Notwithstanding any other provision
 21 of this part, on and after March 1, 1997, the minimum wage for all
 22 industries shall not be less than five dollars (\$5.00) per hour; on and after
 23 March 1, 1998, the minimum wage for all industries shall not be less than
 24 five dollars and seventy-five cents (\$5.75) per hour."

25 58. Also, Industrial Welfare Commission Orders 1-2002; California Code of
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1 Regulations, Title 8, §§11010 was also in force and effect at the relevant
2 time, setting the minimum wage at six dollars and seventy-five cents
3 (\$6.75) for all hours worked after January 1, 2002.

4
5 59. Defendant Williams failed to compensate Plaintiff for hours worked and
6 failed to allow legal breaks. Under the aforementioned wage order and
7 regulations, Plaintiff is to recover compensation for all hours worked but
8 not paid by Defendant including routinely missed breaks. As a proximate
9 result of the aforementioned violations, Plaintiff has been damaged in an
10 amount according to proof at time of trial, but in an amount in excess of the
11 jurisdiction of this Court. Defendant' conduct described herein violates
12 Labor Code §§§§ 558, 1182.11, and 1194. Therefore, pursuant to Labor
13 Code §§§§ 218.5, 558, and 1194, Plaintiff is entitled to recover damages
14 for the nonpayment of wages for all hours worked, penalties, reasonable
15 attorney's fees and costs of suit.
16

17
18 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- 19 1. For general economic and non-economic damages according to proof;
20 2. For special damages according to proof;
21 3. For punitive damages where allowed by law;
22 4. For prejudgment interest;
23 5. For costs of suit incurred herein;
24 6. For attorney's fees as allowed by law, including but not limited to "private attorney
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1 general" statutes contained in CCP 1021.5;

2 7. Compensation for all hours worked but not paid; and

3 8. For such other and further relief as this Court deems just and proper.

4
5 Dated: 8-17-06

LAW OFFICES OF R. MICHAEL HOFFMAN

6 /s/

7 By: _____
8 R. Michael Hoffman, Attorney for Plaintiff

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Attorneys for Defendant
WILLIAMS LEA INC.

ENDORSED
FILED
San Francisco County Superior Court

JUL 6 2007

GORDON PARK-LI, Clerk
BERNADETTE THOMPSON
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JUDE DELGADO, an Individual

Plaintiff,

vs.

WILLIAMS LEA INC., a Corporation;
Charlotte Dolly, an individual; and DOES 1
through 100, inclusive,

Defendants.

No. CGC07-463768

DEFENDANT WILLIAMS LEA INC.'S
ANSWER TO COMPLAINT FOR
DAMAGES

Defendant Williams Lea Inc. ("Williams Lea") hereby answers plaintiff Jude Delgado's
unverified Complaint for Damages (the "Complaint") in the above-captioned matter, for itself
and for no other defendant, by admitting, denying, and alleging as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure § 431.30(d), Williams Lea generally
denies each and every allegation contained in the Complaint and further denies that plaintiff was
damaged in the nature alleged, or in any other manner, or at all.

Further answering the Complaint, Williams Lea denies that plaintiff has sustained any
injury, damage or loss by reason of any conduct, action, error or omission on the part of

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525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-2708
(415) 882-5000

Williams Lea, or any agent, employee or any other person acting under Williams Lea's authority or control.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to plaintiff's Complaint, Williams Lea alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint, and each cause of action set forth therein, fails to state facts sufficient to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the exclusive remedy provisions of the California Workers' Compensation laws, including, but not limited to, California Labor Code § 3600, *et. seq.*

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, from bringing these claims because he was an at-will employee whose employment was terminable at will, with or without cause, within the meaning of California Labor Code § 2922.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by operation of applicable statutes of limitation including, but not limited to, California Code of Civil Procedure §§ 337(1), 338(a), 339(1), 340(1), (2) and/or (3), 343, California Government Code §§ 12960 and 12965(b), and all other applicable limitations, statutes and requirements.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because he has failed to satisfy the procedural and/or jurisdictional prerequisites necessary to maintain some or all of his purported causes of action.

SIXTH ADDITIONAL DEFENSE

Plaintiff's claims are barred, in whole or in part, because he failed to exhaust his administrative remedies.

1 SEVENTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims are barred, in whole or in part, because he failed to avail himself of
3 Williams Lea's policies and procedures for redress.

4 EIGHTH AFFIRMATIVE DEFENSE

5 Williams Lea acted with proper justification and in a reasonable and appropriate manner,
6 in good faith, for a fair, honest and lawful reason, and in compliance with legal requirements.

7 NINTH ADDITIONAL DEFENSE

8 Any and all conduct of which plaintiff complains was required by business necessity.

9 TENTH ADDITIONAL DEFENSE

10 The acts, conduct, or omissions of Williams Lea were privileged, appropriate, and/or
11 justified and consistent with legal requirements.

12 ELEVENTH AFFIRMATIVE DEFENSE

13 The Complaint, and each and every cause of action therein, is barred and/or plaintiff's
14 recovery therefore should be denied because plaintiff's alleged damages were the result of
15 plaintiff's own conduct.

16 TWELFTH AFFIRMATIVE DEFENSE

17 The Complaint, and each and every purported cause of action therein, is barred by the
18 active fault of plaintiff.

19 THIRTEENTH AFFIRMATIVE DEFENSE

20 Intervening, superseding and/or supervening acts proximately caused plaintiff's
21 damages, if any.

22 FOURTEENTH AFFIRMATIVE DEFENSE

23 Plaintiff is precluded from recovering punitive damages, either in whole or in part, from
24 Williams Lea, under the applicable provisions of law, including, but not limited to, California
25 Civil Code § 3294.

26 FIFTEENTH AFFIRMATIVE DEFENSE

27 Imposition of punitive damages against Williams Lea under these circumstances would
28 be unconstitutional under provisions of both the Constitution of the United States and the

1 Constitution of the State of California, including, without limitation, as violative of the Eighth
2 Amendment proscription against excessive fines and violative of due process protection.

3 SIXTEENTH ADDITIONAL DEFENSE

4 To the extent plaintiff has failed to mitigate, minimize, or avoid any damage he allegedly
5 sustained, recovery, if any, must be reduced by that amount.

6 SEVENTEENTH ADDITIONAL DEFENSE

7 Plaintiff's claims for punitive damages are barred as to any causes of action for which
8 such relief is unavailable.

9 EIGHTEENTH ADDITIONAL DEFENSE

10 Plaintiff's claims for attorneys' fees are barred as to any causes of action for which such
11 relief is unavailable.

12 NINETEENTH ADDITIONAL DEFENSE

13 Plaintiff's claims are barred by the doctrine of waiver.

14 TWENTIETH ADDITIONAL DEFENSE

15 Plaintiff's claims are barred by the doctrine of estoppel.

16 TWENTY-FIRST ADDITIONAL DEFENSE

17 The Complaint, and each and every purported cause of action therein, is barred by the
18 doctrine of unclean hands.

19 TWENTY-SECOND AFFIRMATIVE DEFENSE

20 Plaintiff's slander cause of action is barred, in whole or in part, because any
21 statements made by Charlotte Dolly were truthful, opinions, privileged and/or non-actionable.

22 TWENTY-THIRD AFFIRMATIVE DEFENSE

23 Plaintiff lacks standing to assert some of all of the causes of action in his
24 Complaint..

25 TWENTY-FOURTH AFFIRMATIVE DEFENSE

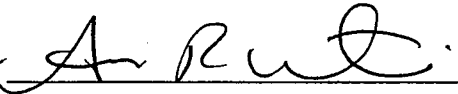
26 Williams Lea reserves its right to amend this Answer to the Complaint to assert such
27 additional defenses as may become apparent during the course of this action.
28

1 WHEREFORE, Williams Lea prays for judgment on plaintiff's Complaint as follows:

- 2 1. That plaintiff take nothing by his Complaint against Williams Lea and that
3 judgment be entered in favor of Williams Lea on each and every one of the causes of action;
4 2. That Williams Lea recover its costs of suit herein;
5 3. That Williams Lea recover reasonable attorneys' fees incurred herein pursuant to
6 statute; and
7 4. That the Court award such additional relief as it deems just and proper

8 Dated: July 5, 2007

SONNENSCHN NATH & ROSENTHAL LLP

9
10
11 By 

12 SONIA MARTIN

13 Attorneys for Defendant WILLIAMS LEA INC.

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PROOF OF SERVICE

I, Cynthia Lakes, hereby declare:

I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Sonnenschein Nath & Rosenthal LLP, 525 Market Street, 26th Floor, San Francisco, California 94105.

On July 6, 2007, I caused to be served on the interested parties in this action the following document(s):

**DEFENDANT WILLIAMS LEA INC.'S ANSWER TO
COMPLAINT FOR DAMAGES**

by placing a true copy(ies) thereof, on the above date, enclosed in a sealed envelope, following the ordinary business practice of Sonnenschein Nath & Rosenthal LLP, as follows:

**Michael Hoffman
Law Offices of Michael Hoffman
22 Battery Street, Suite 1000
San Francisco, CA 94111
Telephone: (415) 362-1111**

☒ U.S. MAIL: I am personally and readily familiar with the business practice of Sonnenschein Nath & Rosenthal LLP for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.

☐ FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile transmission at the above-listed fax number for the party.

☐ HAND DELIVERY: I caused such document to be served by hand delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 6, 2007, at San Francisco, California.


Cynthia Lakes

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